

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket 96-45
Universal Service)	
)	DA 03-2621
NPCR, INC. d/b/a NEXTEL PARTNERS)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Georgia)	
_____)	

**REPLY COMMENTS OF
NEXTEL PARTNERS**

NPCR, INC. d/b/a NEXTEL PARTNERS

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	iii
REPLY COMMENTS.....	1
A. Designation of Nextel Partners as an ETC Will Promote the Goals of Universal Service.....	2
B. Nextel Partners Will Provide Service Throughout its Designated Service Territory Over its Own Facilities.....	3
C. Designation of Nextel Partners as an ETC is in the Public Interest.....	6
E. The Policy Arguments Raised by the Commenters Are Beyond the Scope of this Proceeding and Fail to Justify a Stay.....	12
Conclusion.....	17
EXHIBIT 1 – RTC Study Areas Withdrawn	

SUMMARY

Nextel Partners has demonstrated in its Petition for Designation that it provides, or will provide upon designation as an Eligible Telecommunications Carrier (“ETC”) all of the “supported services” required by the Commission’s Rules throughout its designated service area. Nextel Partners has also shown that a grant of its Petition is in the public interest for the affected rural telephone company (“RTC”) study areas, because it would result in the benefits of additional competition, innovative services and technology and enhanced consumer choice for those RTC study areas.

The commenters in this proceeding do not present any evidence either that Nextel Partners will not or cannot provide the supported services throughout its designated service area upon designation, or that the public interest will not benefit from granting Nextel Partners ETC status. The commenters’ various claims that granting Nextel Partners ETC status in Georgia will not benefit the public interest are speculative and unsupported by empirical data or legal precedent. Existing Commission policies and precedent favor increased consumer choice and access to technology. The commenters’ arguments opposing Nextel Partners’ Petition run contrary to the goals of universal service and are designed primarily to protect the franchises of rural ILECs at the expense of depriving rural consumers in Georgia of outstanding service and an enhanced menu of choices.

Many of the issues addressed by the commenters are larger questions of national policy (such as the potential for affecting the overall size of the universal service fund) that exceed the scope of this proceeding, which is concerned with Nextel Partners’ eligibility for ETC status in Georgia. The commenters have not provided evidence to support their overarching policy concerns, and in any event are not entitled to have these issues addressed in this proceeding. Nor

do the policy issues discussed by the commenters merit a stay of this proceeding, or the imposition of any further delay in granting Nextel Partners ETC status in Georgia. The Commission must address Nextel Partners' Petition based on existing law and precedent and Nextel Partners will be subject to any changes affecting ETCs that may be promulgated in the future.

In sum, nothing submitted by any commenter in this proceeding has refuted or meaningfully called into question any of the substantive showings made by Nextel Partners in its Petition for Designation. Accordingly, Nextel Partners requests that the Commission grant its Petition without further delay.

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**REPLY COMMENTS OF
NPCR, INC. d/b/a NEXTEL PARTNERS**

NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel hereby submits its “Reply Comments” in the above-captioned proceeding in response to comments filed by Frontier Communications of Georgia, Inc. (“Frontier”), the Georgia Telephone Association, Inc. (“GTA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and Verizon (collectively, the “Commenters”).¹

Nextel Partners’ July 10, 2003 Petition for Designation (the “Petition”) as an Eligible Telecommunications Carrier (“ETC”) demonstrated that Nextel Partners provides, or upon designation will provide, in the Designated Areas² of the State of

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, CC Docket No. 96-45, DA 03-2621 (rel. August 8, 2003); and NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, 68 Fed. Reg. 51016 (August 25, 2003).

² In its Petition, Nextel Partners refers to the non-rural ILEC wire centers and rural telephone company (“RTC”) study areas in which it seeks ETC status as the “Designated Areas.” Nextel Partners has determined not to seek ETC designation in the RTC study

Georgia all of the services and functionalities required of an ETC pursuant to applicable law, and that the public interest would be served by designating Nextel Partners as an ETC.

The Commenters raise a variety of issues, none of which constitutes any legal, factual or policy basis for the denial of Nextel Partners' ETC status. Accordingly, the Commission should grant Nextel Partners ETC status in the Designated Areas of the State of Georgia without further delay.

A. Designation of Nextel Partners as an ETC Will Promote the Goals of Universal Service

The Commission has determined that “[d]esignation of competitive ETCs promotes competition *and* benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³ The Commission’s Universal Service Rules are based on the fundamental assumptions that residents of rural communities will benefit from competition in telecommunications services and access to the same technologies and services that are available to residents of urban areas. In fact, this central goal is stated outright in the Act itself:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and

areas set forth on **Exhibit 1** hereto and therefore withdraws these study areas from consideration in this proceeding.

³ *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 at ¶ 15 (2000) (“*Western Wireless Wyoming Order*”) (emphasis supplied).

that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴

The burden is on parties opposing designation to refute Nextel Partners' threshold showing that its Petition for Designation in Georgia complies with these clearly-stated statutory goals.⁵ As demonstrated herein, the Commenters have not met that burden.

For example, OPASTCO broadly asserts that Nextel Partners' petition "is based entirely on vague generalities regarding the generic benefits of competition."⁶ This is a vast oversimplification of Nextel Partners' Petition. The Petition in fact shows that Nextel Partners will provide *all* of the support services in *each of* the Designated areas over a system using advanced digital wireless technology that is part of a national network, and that Nextel Partners will meet all reasonable requests for service. OPASTCO provides no empirical evidence to refute the showings made by Nextel Partners in its Petition; nor does OPASTCO otherwise demonstrate that designation of Nextel Partners as an ETC will not advance the Commission's pro-competitive, consumer choice, and advanced technology universal service goals.⁷

B. Nextel Partners Will Provide Service Throughout its Designated Service Territory over its Own Facilities

GTA contends that Nextel Partners has failed to substantiate its claim that it serves the entirety of each of the RTC study areas and non-rural ILEC wire centers in

⁴ 47 U.S.C. § 254(b)(3).

⁵ See, e.g., *Western Wireless Wyoming Order* at ¶ 16; *In the Matter of Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532 at ¶¶ 22 and 26 (2002) ("RCC Order").

⁶ OPASTCO Comments at 5.

⁷ Indeed, OPASTCO concedes that its comments "are not intended to debate the many nuances of considering the public interest when evaluating an ETC application." OPASTCO Comments at 5.

which it seeks designation.⁸ In support of its contention, GTA asserts that Nextel Partners has not submitted evidence that it holds licenses for the entirety of all of these areas, and that Nextel Partners has not specified the location of its towers. Accordingly, GTA states that the “record is insufficient” to allow GTA to comment on Nextel’s ability to serve the RTC study areas “either currently or in the future.” Finally, GTA claims that Nextel Partners’ map submitted with its Petition “does not appear to substantiate” Nextel Partners’ claim of coverage, for the reason that Nextel Partners has not provided information as to the quality of service at the -105dBmW level, nor has Nextel Partners stated the number of subscribers that use three-watt phones.

Neither the Act, nor the Commission’s Rules or Orders applicable to Petitions for ETC Designation require a petitioner to submit detailed licensing information as part of its ETC application.⁹ Nextel Partners has made the affirmative representation that it serves all of the RTC areas in which it seeks designation in Georgia, and has additionally certified that it “offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c)(3) of the Act.”¹⁰ These representations are sufficient for

⁸ GTA Comments at 5.

⁹ Section 214(e) of the Act and Section 54.201(d)(1) of the Commission’s Rules state that an eligible telecommunications carrier shall offer supported services “throughout the service area for which the designation is received.” See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(1). They do not require that a petition make a detailed showing of its licensed authority or its existing facilities. The Commission’s *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997) also do not require that petitioners make the type of detailed showings with respect to licensing or facilities that GTA claims are lacking in Nextel Partners’ Petition.

¹⁰ See Nextel Partners Petition for Designation at 5-6 and **Attachment 4** (Declaration of Donald J. Manning, Vice-President, Secretary and General Counsel) at ¶ 6.

purposes of meeting the requirements of the Act, the Rules and Commission Orders.

An ETC is only required to respond to a “reasonable request” to furnish communications service within its designated service territory,¹¹ and is not required to serve every square inch of that area immediately upon designation. Nextel Partners’ Petition clearly demonstrates that Nextel Partners has both the “capability and commitment to provide universal service” in the Designated Areas. This showing satisfies the Commission’s requirements for designation of an ETC.¹² There is no requirement that Nextel Partners have in place in advance of ETC designation the necessary infrastructure to provide service to *all* potential customers in its designated service area.¹³ Accordingly, Nextel Partners need not specify the location of all of its present or future towers in the State of Georgia in its Petition for Designation.

As shown on the coverage map set forth in **Attachment 3** to its Petition, Nextel Partners already provides wireless telecommunications service in much of rural Georgia. Nextel Partners’ coverage map reflects the many Economic Area (“EA”) and site-based licenses pursuant to which Nextel Partners offers its services in Georgia. The Commission’s ULS database contains records of these licenses, which are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., the corporate parent of NPCR, Inc. Since all of this information is readily available to the public from the

¹¹ See, e.g., Declaratory Ruling, *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168 (2002) (“*South Dakota Declaratory Ruling*”) at ¶ 17; see also 47 U.S.C. § 201(a).

¹² See *South Dakota Declaratory Ruling* at ¶ 17; see also *RCC Order* at ¶ 16 (“[a] new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service.”)

¹³ See *RCC Order* at ¶ 16.

Commission's online resources, GTA's assertion that the "record is insufficient" to allow for comment on Nextel's ability to serve the RTC study areas is without merit.¹⁴

In sum, Nextel Partners has demonstrated that it has the requisite "capability and commitment" to provide service throughout the Designated Areas,¹⁵ which will result in significant benefits to consumers in the State of Georgia.

C. Designation of Nextel Partners as an ETC is in the Public Interest

The record in this proceeding clearly demonstrates that Nextel Partners' designation as an ETC will benefit Georgia telecommunications users. These consumers are the focus of the goals of universal service.¹⁶ Under the Commission's universal service policies, high cost and low income consumers in Georgia should be afforded the same opportunities as other consumers to choose a telecommunications carrier, to access new technologies, and to select from a menu of innovative services.¹⁷ Nextel Partners'

¹⁴ GTA's questioning of Nextel Partners' conservative propagation study fails to refute the accuracy of the study or the fact of Nextel Partners' license authorizations throughout the Designated Areas that allows for such coverage. Nextel Partners further notes that Frontier agrees that Nextel Partners is licensed throughout Frontier's RTC study area in Georgia, SAC 220387, and does not challenge Nextel Partners' ability to provide service in that area. *See* Frontier Comments at 1.

¹⁵ *See In the Matter of the Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24493 (2002) ("Cellular South Order") at ¶ 15.

¹⁶ *See Alenco Communications Inc. et al. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("Alenco Communications").

¹⁷ *See In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶¶ 4, 21 (1997) ("Universal Service Order"). *See also Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214 (e) and PUC SUBST. R. 26.418*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168 (Texas Public Utility Commission, October 30, 2000) ("Texas PUC Order") at 2.

designation as an ETC in the Designated Areas would unquestionably advance these universal service goals in the State of Georgia.¹⁸

OPASTCO, Frontier and GTA all maintain that designation of Nextel Partners as an ETC in Georgia will not benefit the public interest.¹⁹ These Commenters raise a number of meritless arguments in an attempt to justify their positions. Frontier contends that designation of Nextel Partners as an ETC will not enhance competition, because wireline and wireless service providers do not compete.²⁰ This argument runs contrary to well-established Commission precedent that clearly and consistently recognizes the benefits to competition of designating wireless ETCs in RTC study areas.²¹ Frontier has not presented any empirical evidence to support its assertion, and its contention does not warrant serious consideration.

¹⁸ See, e.g., *Western Wireless Wyoming Order* at ¶ 15 (“[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”).

¹⁹ Frontier asserts that Nextel Partners’ Petition should be subjected to a “rigorous” public interest test. See Frontier Comments at 2-3. As demonstrated herein, however, designation of Nextel Partners as an ETC in the Designated Areas is clearly in the interest of the public, under the standards established by Congress and the Commission. Moreover, Frontier does not explain why it is appropriate and legal that Nextel Partners should be treated differently than any other similarly-situated applicant for ETC status.

²⁰ Frontier Comments at 4.

²¹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133 (2001) (“*Western Wireless Pine Ridge Order*”) at ¶ 8 (we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas); *South Dakota Declaratory Ruling* at ¶ 16 (designating wireless carriers that already provided services in RTC study areas as ETCs); *RCC Order* at ¶¶ 22-25 (finding that designation of wireless carrier RCC Holdings will bring competition and innovative service to rural consumers).

Frontier’s position that it does not compete with Nextel Partners, based solely on the fact that Nextel Partners does not offer wireline services, is no more than a thinly-veiled attempt to exclude all wireless carriers from ETC status²² in contravention of the Commission’s policy of technological neutrality.²³ At any rate, the Commission has already determined that wireless providers should be designated as ETCs, stating, “We agree with the Joint Board’s analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1).”²⁴

Frontier’s admission that Nextel Partners’ service is “complementary” to wireline services²⁵ entirely undermines Frontier’s claim that designation of Nextel Partners as an ETC is not in the public interest. By characterizing Nextel Partners’ wireless services as “complementary,” Frontier concedes that Nextel Partners supplies telecommunications services that Frontier’s customers – and other rural consumers -- would otherwise lack.

²² OPASTCO also seeks in its comments to block wireless petitioners from designation as ETCs, in contravention of the Commission’s technology-neutral policies. GTA also asserts, without any factual support, that rural users “overwhelmingly” do not accept or perceive CMRS service to be a replacement to wireline service. (GTA Comments at 4) However, even assuming *arguendo* that this is accurate, this still does not mean that rural users do not benefit from having competitive alternatives with a different menu of services, prices, and mobility. It is not necessary for the end user to view a competitive ETC as a “replacement” for the incumbent ETC in order to realize a public interest benefit. Simply enhancing the consumers’ choices of complementary communications services in rural areas is an important public interest gain.

²³ See *Universal Service Order* at ¶ 145 (“any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(e)(1)...any wholesale exclusion of a class of carriers by the Commission would be inconsistent with the language of the statute and the pro-competitive goals of the 1996 Act”).

²⁴ *Id.* at ¶ 145.

²⁵ See Frontier Comments at 4.

The addition of Nextel Partners’ “complementary” services increases consumers’ menu of choices, provides new and innovative services, and helps to keep rates “just and affordable.”

Wireless carriers such as Nextel Partners also add the element of mobility to the provision of universal service, a valuable option that the incumbent wireline LEC cannot match. This essential difference is particularly beneficial to consumers in rural areas, including remote roads and highways, where wireline telephones are more widely spaced than in concentrated urban areas. In addition, Nextel Partners typically offers a much larger local calling area than the RTCs it competes with, and this is a significant benefit to consumers.²⁶ All of the foregoing benefits are in the public interest and advance the goals of universal service.²⁷

Frontier argues that designation of Nextel Partners as an ETC will not bring any additional competitive benefits to the public, because Nextel Partners is not a *new* market entrant.²⁸ This argument, however, is not persuasive, because the Commission does not require that an ETC applicant be new to the study area.²⁹ Frontier’s additional arguments concerning “cream-skimming”³⁰ and “windfall profits”³¹ are similarly unconvincing.

²⁶ Moreover, unlike some other wireless carriers, Nextel Partners does not impose any “roaming” charges for the use of its nationwide service.

²⁷ See, e.g., *RCC Order* at ¶¶ 23-24.

²⁸ See Frontier Comments at 5.

²⁹ See *Western Wireless Pine Ridge Order* at ¶ 8; *South Dakota Declaratory Ruling* at ¶ 16 (designating wireless carriers that already provided services in study areas as ETCs).

³⁰ Frontier’s “cream-skimming” argument is that, upon designation as an ETC Nextel Partners will receive an excessive amount of universal service funds because a wireless customer’s eligibility for funding is based on the customer’s billing address. See Frontier Comments at 5-6. However, this issue exceeds the scope of the instant

OPASTCO's argument that Nextel Partners' petition has not made a proper public interest showing because it has failed to consider the "public costs" of granting high cost support to Nextel Partners is similarly unconvincing.³² OPASTCO has not provided any evidence that grant of Nextel Partners' Petition in this proceeding would result in any "public costs" or any other identifiable harm. OPASTCO's overall claim that an ETC designation should only be made when the public interest benefits from supporting multiple ETCs exceeds the public costs of supporting multiple networks (*see* OPASTCO

proceeding, which is only concerned with Nextel Partner's eligibility for ETC status. *See, e.g., South Dakota Declaratory Ruling* at ¶ 2. In addition, the Commission has adopted the recommendation of the Rural Task Force that "a wireless mobile carrier use a customer's location . . . for purposes of receiving high-cost universal service support." *In the Matter of Federal-State Joint Board on Universal Service: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Red 11244 at ¶ 180 (2001) ("MAG Order"). Finally, Frontier's argument that USF support can be "exported out of the intended study area" to the extent that mobile users may use their handsets in areas other than the area in which they live is facially absurd. Although mobile users' handsets are mobile, the infrastructure that supports them is not. When mobile users cross into other study areas, other parts of Georgia, or for that matter, other parts of the United States, they communicate with towers and other facilities that are most proximate to their locations – but this does not mean that the USF high cost support intended for Frontier's RTC study area will be spent elsewhere. In fact, as Frontier is well aware, in order to receive high cost funding, Nextel Partners must certify annually to the Commission and to USAC that the funds received will be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," within the specific study areas in which Nextel Partners is designated. Accordingly, the fact that Nextel Partners provides a mobile service will not cause misdirection of USF High Cost subsidies.

³¹ Frontier's "windfall profits" argument asserts, without any foundation, that the addition of USF subsidies to a CMRS carrier's financial structure will result in an unanticipated "windfall profit." *See* Frontier Comments at 7. But there is no empirical basis whatsoever for this claim. Moreover, it is beyond the scope of this proceeding, which concerns Nextel Partners' Petition for Designation, rather than the mechanism for computing USF payments to ETCs.

³² *See* OPASTCO Comments at 5.

Comments at 5) is a general policy statement rather than a specific comment on the Petition at hand that would aid the Commission in its decision-making. OPASTCO has not even attempted to demonstrate how such a generalized goal could be objectified in the context of this proceeding, or that its application would result in anything other than a grant of Nextel Partners' Petition.

Although GTA also asserts that the designation of Nextel Partners as an ETC is contrary to the public interest, GTA offers no evidence in support of that contention. Instead, GTA only raises general policy-oriented questions about the scope of public interest, and does not assert a single fact that would tend to prove that the designation of Nextel Partners as an ETC in any Georgia study area would harm any consumer. For example, GTA argues that Nextel Partners is not a "new entrant" in the markets where it seeks designation, and therefore cannot claim public interest benefits of competition.³³ GTA ignores the fact that, although Nextel Partners may not be a "new entrant," upon ETC designation Nextel Partners would be a new provider of USF supported services, including Lifeline and Linkup services. Moreover, upon grant of ETC status, Nextel Partners will undertake to provide service throughout its designated services upon a "reasonable request," something that it is not required to do at the present. Additional funding will allow for more rapid and extensive development of Nextel Partners' network to better serve Georgia's rural citizens. Accordingly, the scope and character of Nextel Partners' presence in its designated service territory as an ETC will most certainly increase competition and bring related benefits to the public.

³³ GTA Comments at 4.

D. The Policy Arguments Raised by the Commenters Are Beyond the Scope of this Proceeding, and Additionally Fail to Justify a Stay

This proceeding is solely concerned with the question of Nextel Partners' qualifications to be granted ETC status, and is not a general forum for the consideration of national policies regarding universal service. To the extent that the arguments raised by the Commenters seek to address larger questions of policy, they exceed the scope of this proceeding and cannot be addressed in the context of determining Nextel Partners' qualification for ETC status.³⁴

Nor does the existence of extrinsic policy issues justify a stay of this proceeding, or the imposition of delay in the consideration of Nextel Partners' Petition. OPASTCO nevertheless requests that the Commission stay consideration of Nextel Partners' Petition pending the resolution of policy issues that exceed the scope of this proceeding.³⁵

Verizon suggests that additional ETC designations in non-rural areas threaten the form of

³⁴ For example, GTA's argument that High Cost Fund subsidies received by a CETC should not be based on the averaged costs of the wireline LEC in the study area (*see* GTA Comments at 4-5) is essentially a proposal for a Commission rulemaking rather than a specific comment on Nextel Partner's qualifications to receive ETC status. Similarly, GTA's expressed concerns about changes in USF policy that might affect the amount of subsidies that GTA member companies might receive (*see* GTA Comments at 6) are concerns that must be addressed in some other proceeding. The instant proceeding is concerned only with the question of whether Nextel Partners should be designated an ETC for a specified service territory in the State of Georgia. *See, e.g., RCC Order* at ¶ 32 ("We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC.")

³⁵ OPASTCO claims that there is "precedent" for staying ETC designations, referring to a 1993 Order from the Commission that imposed an indexed cap on USF support for local exchange carriers on an interim basis. *See* OPASTCO Comments at 4 n.9; *see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 9 FCC Rcd 303 (1993). This assertion, however is fatally flawed, since the cited case, which predates the 1996 Act, neither stays any Commission proceeding, nor affects the eligibility of any ETC applicant, but merely adjusts the funding for ILECs on a temporary basis.

access charges established by the CALLS Order in CC Docket Nos. 96-262 and 94-1.³⁶ OPASTCO proposes that the Commission consider staying the instant proceeding pending resolution of high-cost support and other USF issues presently before the Federal-State Joint Board.³⁷

The possibility of a future change in rules generally affecting the designation of ETCs and/or the distribution of Universal Service Funds cannot justify staying Nextel Partners' request for designation as an ETC in Georgia. The Commission is bound to abide by *existing* rules and policies in all proceedings.³⁸ The Commission is committed to resolving ETC designation petitions in a six-month time frame, recognizing that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas."³⁹ Staying the instant proceeding would "unnecessarily delay resolution of this matter well beyond the Commission's informal [six month] commitment."⁴⁰

Moreover, as a practical matter, since Nextel Partners and all other ETC petitioners must in any event comply with Commission Orders that adopt Joint Board recommendations, there is no logic in holding ETC designation proceedings in abeyance

³⁶ Verizon Comments at ¶ 1.

³⁷ See OPASTCO Comments at 2.

³⁸ *CSRA Cablevision, Inc.*, 47 FCC 2d 572 at ¶ 6 (1974) ("Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.").

³⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000) ("*Twelfth Report and Order*").

⁴⁰ See *RCC Order* at n.27.

pending the outcome of Joint Board proceedings.⁴¹ This was clearly recognized by the Commission in a recent Order in Docket 96-45, in which the Commission stated:

We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. *As such, we recognize that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future.* We intend to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.⁴²

OPASTCO raises the specter of imminent ballooning of the Universal Service Fund as grounds for a stay, asserting that if Nextel Partners is granted ETC designation in Georgia, then all CMRS providers everywhere will seek and obtain ETC designation.⁴³ OPASTCO estimates that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.⁴⁴ However, OPASTCO provides no evidence demonstrating that all CMRS providers intend to be designated as ETCs.⁴⁵ In fact, there has been no

⁴¹ Frontier's request that the Commission grant ETC status to Nextel Partners "only under [its] existing rules" (*see* Frontier Comments at 8) is effectively addressed by the fact that Nextel Partners must comply with any additional obligations that are imposed subsequent to grant. In any event, the Commission is limited to taking actions under its existing rules, as discussed *supra*. Frontier's implication that Nextel Partners should be deprived of its ETC status if designation standards are altered by subsequent Commission action is unsupported by any authority, and seeks to undermine the policy objectives of granting ETC status to competitive carriers in the first place.

⁴² *In the Matter of the Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 2003 FCC Lexis 3915 at ¶ 34 (emphasis supplied) ("*Competitive ETC Order*").

⁴³ *See* OPASTCO Comments at 2-3.

⁴⁴ OPASTCO Comments at 3.

⁴⁵ Nextel Partners' primary business focus is the provision of services in mid-sized and tertiary markets. This business focus makes Nextel Partners a natural and high-priority candidate for ETC designation. But not every CMRS carrier is interested in pursuing an active course of providing the required services for ETC designation and

flood of wireline ETC petitioners and there is no reason to assume that wireless carriers will act differently by seeking to obtain ETC designation *en masse*.

A review of the data reveals that it is the rural ILECs that are responsible for the growth of the fund. Wireless ETCs received less than \$1.5 million in high cost support in 2000, where as the rural LECs received almost \$2.03 billion in high cost support in that same year.⁴⁶ Assuming a highly optimistic growth projection, wireless ETC funding would rise to, at most, approximately \$102 million in 2003, compared to the approximately \$3.2 billion in high cost funding that rural LECs will receive during the same time period.⁴⁷

Moreover, in developing support mechanisms, the Commission was aware that the Universal Service Fund would grow as competitive ETCs entered the market, and the Commission adopted mechanisms that would allow for adjustment over time.⁴⁸ The

building out a network in high-cost areas. There is no reason to believe that wireless ETCs pose any greater risk than wireline ETCs to the survival of the Universal Service Fund.

⁴⁶ See Reply Comments of CTIA, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (June 3, 2002) at 3.

⁴⁷ See *id.*

⁴⁸ See *MAG Order* at ¶ 11 (“The plan adopted today will provide certainty and stability for rural carriers for the next five years, enabling them to continue to provide supported services at affordable rates to American consumers. While we take an important step today on rural universal service reform, our task is not done. Our universal service rules cannot remain static in a dynamic marketplace. As we move forward, we will continue to refine our policies to preserve and advance universal service, consistent with the mandates in section 254.”); see also *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 18 FCC Rcd 2932, ¶ 84 (2003) (wherein the Commission is already working to address anticipated future growth in the USF resulting from the entry of additional wireless ETCs during the next several years.).

funding⁴⁹ and all of the core services⁵⁰ were discussed in length, reviewed by the Joint Board, reconsidered in the recent Order and Order on Reconsideration⁵¹ and, in some cases, litigated.⁵² In establishing the funding mechanisms, the Commission struck a balance between the concerns of all types of parties and carriers, including consideration of issues involving wireless ETC designation.⁵³ To prevent designation of competitive ETCs as we move into the implementation phase of these decisions is troubling at best, and antithetical to the underlying purposes of the Act.⁵⁴ After the ILECs fought to increase the amount of funding to support embedded costs,⁵⁵ they are now using the size of the fund as an argument to prevent the entry of competitors.⁵⁶

⁴⁹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20452, ¶ 90 (1999) (discussing support of second lines and the lines of non-ILEC ETCs).

⁵⁰ See *Competitive ETC Order* at ¶ 7.

⁵¹ *Id.*

⁵² See, e.g., *Alenco Communications*.

⁵³ See *MAG Order* at ¶ 17 (“The Recommendation represents the consensus of individual Rural Task Force members, who work for a broad range of interested parties, often with competing interests, including rural telephone companies, competitive local exchange carriers, interexchange carriers, wireless providers, consumer advocates, and state and federal government agencies”), ¶ 178 (“All telecommunications carriers, including commercial mobile radio service (CMRS) carriers that provide supported services, regardless of the technology used, may be eligible to receive federal universal service support”), and ¶ 180 (“we adopt the Rural Task Force’s recommendation that a wireless mobile carrier use a customer’s location ... for purposes of receiving high-cost universal service support”).

⁵⁴ See *Alenco Communications* at 619.

⁵⁵ See *MAG Order* at ¶¶ 6-8.

⁵⁶ In non-rural study areas, the OPASTCO’s anticompetitive “ballooning” argument, which OPASTCO has attempted to cloak in the guise of a “public interest” concern over the size of the fund, is irrelevant since no public interest determination is warranted under the Act for non-rural study areas.

Conclusion

In sum, all applicable legal and public interest requirements for designation of Nextel Partners as an Eligible Telecommunications Carrier have been satisfied. Accordingly, Nextel Partners requests that the Commission promptly grant its Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia.

Respectfully submitted,

NPCR, Inc. d/b/a Nextel Partners

By [signed]
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Date: September 21, 2003⁵⁷

⁵⁷ Nextel Partners notes that these Reply Comments were originally due to be filed with the Commission on September 18, 2003. However, due to Hurricane Isabel, the Commission was closed on both the original due date of Thursday, September 18 and the following day of Friday, September 19. Accordingly, these Reply Comments are filed on the “next business day” in accordance with Section 1.4(j) of the Commission’s Rules.

EXHIBIT 1

RTC Study Areas Withdrawn

220376 Pembroke Tel Co

220378 Planters Rural Coop

CERTIFICATE OF SERVICE

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this 21st day of September, 2003, a true and correct photocopy of the foregoing "Reply Comments" was sent, via US First Class Mail, postage prepaid, to the following persons:

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